was not called I must presume that his evidence would be unfavourable and would not support the evidence of her husband.

For these reasons I have come to the conclusion that Ex. D.1 is not an authentic document.

The defendant's husband produced the note book Ex. D.4 to substantiate his statement that the loan had been repaid. In this note book were recorded his personal account, the entries of which were in ink, and his wife's account with her father, the entries of which were in pencil and in the other half of the note book. Having carefully examined the note book I must say that it certainly looks to me that her account has been specially written up for the purpose of this case.

The onus is on the defendant to establish that she bought and paid for the quarter share in the Rochalie Drive property. She has failed to discharge that onus.

The next question for consideration is whether the Rochalie Drive property is held on trust by the plaintiffs and the defendant for their father, Chua Cheow Tien, for life with remainder to the ten children of Chua Cheow Tien, by his first wife.

The evidence adduced by the plaintiffs, which I accept, clearly showed that there was a trust for the father for life with remainder to the ten children. The defendant said that there was no trust and that she was not present at the gathering in the father's house on the 11th June, 1953. All her sisters, however, said was that there was a trust and that she was present at the gathering. I have no doubt that the defendant was present at this gathering and heard what the father said about the property and that she accepted the trust. It has clearly been proved that the defendant received $400 a year from her father to pay for the income tax due on this property and on another property. It was admitted by the defendant that the rents were paid over to the father. It was also admitted by the defendant that the property tax on the property was paid by the father. I find that the title deeds were held by the father. In my view the trust has clearly been established.

It is submitted by counsel for the defendant that the evidence disclosed a conspiracy to defraud the income tax department and the court should not assist the plaintiffs, who were parties with their father in the conspiracy, to achieve this illegal purpose and that the court should treat the conveyance to the defendant as an advancement to her. The case of *Palaniappa Chettiar* v. *Arunasalam Chettiar*,[1] was cited in support of this submission. I am unable to find that the transfer by the father to the four daughters was made for a fraudulent or illegal purpose namely to defraud the income tax department as there is no evidence of it. Furthermore, I do not think that the defendant should be allowed to suggest that the transaction was entered into for a fraudulent or illegal purpose. She has not pleaded it distinctly and she has not given any evidence about it. In this case the plaintiffs had no reason to disclose any illegality and did not do so. Therein lies the distinction between *Palaniappa Chettiar* v. *Arunasalam Chettiar* and the present case.

In the result there must be judgment for the plaintiffs with costs and the counterclaim of the defendant is dismissed with costs.

There will be an order in terms of prayers 1 and 2 of the plaintiffs' claim.

Judgment for the plaintiffs.

Solicitors: *Drew & Napier; Laycock & Ong.*

CHUA CHEOW TIEN v. CHUA GEOK ENG & ANOR.

[O.C.J. (Chua J.) May 31, 1968]
[Singapore — Suit No. 824 of 1965]

Trust — Advancement — Presumption of — Property bought by father in name of wife and child — Verbal request that they should hold on trust for him absolutely — Title deeds held by father — Defendants' acts and declarations — Sufficient evidence to rebut presumption — Alleged illegality of purpose.

The plaintiff (the father) brought the action against the defendants (his daughter and wife) for a declaration that a piece of land which was registered in the name of the defendants was held by them on trust for the plaintiff. The plaintiff bought the property in 1951 and placed it in the names of the defendants, having previously verbally requested them to hold it on trust for him absolutely. The plaintiff as the learned judge found, retained the title deeds, enjoyed the rents from the property and paid the property tax and income tax. The defendants did not plead but alleged during the course of the hearing that the purpose of the transaction was to enable the father to avoid income tax since the daughter's rate of tax was lower than the father's. The property was voluntarily mortgaged twice by the defendants at the request of the plaintiff and for his benefit.

In 1962, the plaintiff asked for the return of the property. The defendants agreed, and signed a letter authorising the sale of the property and acknowledging that the surplus remaining after discharge of the mortgage should be returned to the plaintiff. The second defendant also signed a conveyance of the property back to the plaintiff.

Held, allowing the claim: (1) if a person buys property in the name of his wife or child there is a rebuttable presumption that the legal and beneficial ownership of the property is in the wife or child. The onus is on those who seek to rebut the presumption to establish that the property is held on trust. The admissible evidence in rebuttal is limited to acts, circumstances and declarations leading to or forming part of the transaction or so immediately following and connected with it as in effect to be contemporaneous with or form part of it and such admissible evidence can be used either for or against the party who did the act or made the declaration. Subsequent acts and declarations are ad-

missible as evidence only against the party who did the acts or made the declarations and not in his favour;

(2) on the facts of the case, the plaintiff had discharged the burden which rested on him of rebutting the presumption of advancement and had established that the defendants held the property in trust for him;

(3) the evidence did not disclose any illegality of purpose on the part of the father. Similar observations on illegality as those in *Chua Kah Wee* v. *Chua Geok Eng.*[1]

[Editorial Note:

1. The 2nd defendant (the wife) was originally a plaintiff in the proceedings claiming that the property should be returned by the 1st defendant (the daughter) to the father, the present plaintiff. During the time that the case took to come on for hearing the wife intimated that she desired to claim a half share in the property for herself. The father then applied by summons to remove the wife as a plaintiff and to substitute her as a defendant. The application was opposed by the wife, but the learned trial judge ruled that all persons who are alleged to be trustees should be parties to the action and that the wife should accordingly be added as a defendant.

2. It was further argued in the interlocutory proceedings that evidence to vary the express terms of the Land Register was inadmissible. The learned judge rejected this contention.

3. After the trial of the action the 2nd defendant appealed to the Federal Court (Wee Chong Jin C.J., Tan Ah Tah F.J. and Choor Singh J.). The court dismissed the appeal on September 13, 1968, but did not give a written judgment.]

Cases referred to:—

(1) *Chua Kah Wee & Ors.* v. *Chua Geok Eng* [1968] 2 M.L.J. 175.

(2) *Shepherd* v. *Cartwright* [1955] A C. 431.

(3) *Scawin* v. *Scawin* (1841), 1 Y. & C.C.C. 65; 62 E.R. 792.

(4) *Warren* v. *Gurney* [1944] 2 All E.R. 472.

(5) *Palaniappa Chettiar* v. *Arunasalam Chettiar* [1962] M.L.J. 143; [1962] 1 All E.R. 494, P.C.

CIVIL SUIT.

K. A. O'Connor for the plaintiff.

C. H. Smith for the first defendant.

R. E. Redrup for the second defendant.

Cur. Adv. Vult.

Chua J.: The plaintiff in this case is the father of the first defendant and the husband of the second defendant and he claims as beneficiary of the properties known as Lots 186-9, 186-22 and 186-25 of Mukim I, Singapore (hereinafter referred to as "the Tiong Bahru property") against the defendants as co-trustees of the Tiong Bahru property and personally for:—

1. A declaration that the Tiong Bahru property now standing in the names of the defendants as tenants in common in equal shares is held by them on trust for the plaintiff absolutely.

2. An order that the first defendant do join with the second defendant in conveying the Tiong Bahru property to the plaintiff or as he shall direct.

The defendants in their defence admit that the consideration for the conveyance of the Tiong Bahru property to them was paid by the plaintiff but say that the purpose of the plaintiff in placing the said property in their names jointly was in order to make a gift of the said property to them and they counterclaim:—

(1) A declaration that they are beneficially entitled to one-half share each in the said property.

(2) A declaration that the plaintiff has no interest in the same property.

(3) An account of the rents and profits of the said property.

The first defendant further counterclaims for an account of the rents and profits of No. 2 Rochalie Drive, Singapore, which was the subject matter in *Chua Kah Wee & Ors.* v. *Chua Geok Eng,*[1] in which the plaintiff was not a party but in whose interest the suit was brought against the first defendant. I will hereafter refer to it as the Rochalie Drive property.

The plaintiff's evidence was shortly this. He is now 70 years old. In 1951 he was the managing director and principal shareholder of Tian Hup Co. Ltd. (hereinafter referred to as "the company"). The company owned the Tiong Bahru property. At the beginning of 1951 he was ill (he was then 54 years old) and he thought of making provisions for his twenty-four children in case he should die. He had not yet made a will. He discussed the matter with the first defendant and the first defendant suggested that he transfer to her the Tiong Bahru property, which was a large property, so that each child's share would be substantial. He reflected over the matter and thought it wise to put the said property into the names of the first defendant and the second defendant. He then instructed his solicitor, P. Y. Tan, to prepare the conveyance accordingly but he did not inform his solicitor about the trust. He gave to his solicitor his personal cheque for $70,000 and this sum was eventually paid over to the company. In addition he paid the stamp fees and the solicitor's fees. The conveyance (Ex. P.1) was executed by him as director and by his son Chua Hong Tian as manager on behalf of the company. His solicitor then asked the two defendants to sign an acknowledgment that they had received the title deeds and they handed the title deeds to him. As regards the trust his evidence was as follows:—

"The two defendants came to my Wilkinson Road house and I told them that the property was conveyed to them in trust for me and in the event of my death the property was to be shared among the 24 children. I reserved the liberty to sell or mortgage or recover the property. They agreed to hold the property in trust for

me in the presence of one or two of my children; these children heard what was going on."

After the Tiong Bahru property had been conveyed to the defendants the rent from the said property was collected by Tan Choo Keng, the husband of the first defendant, who also collected the rents from his other properties. Tan Choo Keng then paid over the rents collected to him after deducting 2½% commission. He paid the property tax on the Tiong Bahru property. He instructed his daughter Chua Kah Wee to make out a cheque for $400 every year and give it to the first defendant for the first defendant to pay the income tax due on the Tiong Bahru property as well as the Rochalie Drive property. He also paid for the second defendant's income tax due on the Tiong Bahru property, which was included in his tax returns. In 1959 the company entered into a contract with the Commander-in-Chief, Far East Land Forces, Singapore, and the United Chinese Bank, Ltd. guaranteed the due fulfilment and performance by the company of all the terms and conditions of the contract between the company and the Commander-in-Chief and the payment for all losses and damages. He discussed the matter with the defendants and they agreed to mortgage the Tiong Bahru property to the bank. On the 21st October, 1959, the defendants at his request mortgaged the Tiong Bahru property to the United Chinese Bank Ltd. for $100,000 (Ex. P.2) to keep the bank indemnified against all actions, proceedings, liabilities, claims, damages, costs and expenses in relation to or arising out of the guarantee which the bank had signed. In 1960 the mortgage was discharged and the Tiong Bahru property was reconveyed to the defendants by the bank on 30th September, 1960. In 1960 the company entered into a similar contract with the Commander-in-Chief, Far East Land Forces, Singapore, and the United Chinese Bank Ltd. gave a similar guarantee. On the 30th September, 1960, the defendants at his request again mortgaged the Tiong Bahru property to the United Chinese Bank Ltd. for a similar purpose but this time for the sum of $110,000 (Ex. P.3). He did not put pressure on the defendants on either occasion. In 1962 he asked the defendants to return the Tiong Bahru property to him and the defendants agreed. On the 5th December, 1962, he took the two defendants to the office of P. Y. Tan and P. Y. Tan's clerk, Tan Tiat Hee, prepared a letter addressed to Messrs. P. Y. Tan & Co. which was signed voluntarily by the defendants after it was read and explained to them and witnessed by Tan Tiat Hee. The letter (Ex. P.15) reads as followes:—

"Dear Sirs,

Re: Freehold Lands at Yong Siak Street.
Mukim I Lot No. 186-9 = 1,027 sq. ft.
Mukim I Lot No. 186-22 = 2,789 sq. ft.
Mukim I Lot No. 186-25 = 80,885 sq. ft.

We, the undersigned, Mesdames Tan Ah Chua and Chua Geok Eng hereby inform you that the above properties are purchased by us but in fact the whole of the purchase money was provided by Mr. Chua Cheow Tian.

Now we authorised the said Mr. Chua Cheow Tian to sell the said properties and if the sale is put through we requested the said Chua Cheow Tian to pay off the mortgage money owing by us to the bank and the balance are to be paid to the said Chua Cheow Tian."

A conveyance could not be prepared at that time as the title deeds were still with the bank. Later when the title deeds were returned by the bank he instructed his solicitors Messrs. Drew & Napier to prepare a conveyance to convey the Tiong Bahru property to him. The second defendant signed the conveyance (Ex. P.15) but the first defendant refused to sign. In April, 1965, he and the second defendant went to the office of Messrs. Drew & Napier and gave instructions to the solicitors to sue the first defendant for the return of the Tiong Bahru property to him. In May, 1965, the present proceedings were commenced against the first defendant by him and the second defendant. In September, 1966, his three sons by the second defendant absconded with some money of his. The matter was reported to the police and he disowned his three sons. Trouble then arose between him and the second defendant. (By an order of court dated the 3rd April, 1967, the name of Tan Ah Chua was struck out of the writ of summons as plaintiff and added as the second defendant.)

In cross-examination the witness was shown Exhibit D.4, a letter dated 10th December, 1962, addressed to Messrs. P. Y. Tan & Co., concerning the Tiong Bahru property. He admitted that the signature on the letter was his but said that the letter was not written by him. He said that the letter was written by someone on one of the blank pieces of paper which he signed and gave to his son-in-law, Tan Choo Keng, as to which he had given evidence in suit 823 of 1965. Exhibit D.4 reads as follows:—

"In reference to the letter to you from Mesdames Tan Ah Chua and Chua Geok Eng dated the 5th December 1962 I hereby confirm that the money provided for the purchase of the above properties were made by me.

In the circumstances, I hold myself personally responsible for the full repayment to the mortgagee of all sums due to them under the mortgage or for the redemption thereof."

Chua Kah Bin and Chua Kah Wee, daughters of the plaintiff, gave evidence that they went with the plaintiff, Ong Kah Leong and the second defendant sometime in April, 1965, to the office of Mr. O'Connor of Messrs. Drew & Napier and there the second defendant said in their presence that the first defendant should be sued for the recovery of the Tiong Bahru property and that the plaintiff and the second defendant then gave such instructions to the solicitors.

Chua Kah Wee also gave evidence to the effect that at the request of the plaintiff she

made out in all five cheques for $400 each in favour of the first defendant in November, 1959, May, 1960, April, 1961, March, 1962 and March, 1963. (Exhibits P.7 to P.11). These cheques were handed to the first defendant for her to pay the income tax in respect of the Tiong Bahru and Rochalie Drive properties.

Kwa Choo Ping, general manager, of the United Chinese Bank Ltd., Singapore, gave evidence to this effect. The plaintiff was a customer of the bank. On the 22nd May, 1957, the title deeds of the Tiong Bahru property were deposited with the bank to secure the account of Tian Hup & Co. Ltd. He did not know Tan Ah Chuan or Chua Geok Eng but it was the plaintiff who brought the title deeds to the bank. In October, 1959, the title deeds of the Tiong Bahru property were sent by the bank to Messrs. P. Y. Tan & Co. for a mortgage to be prepared.

Mr. P. Y. Tan also gave evidence. He said that the conveyance, Ex. P1, was prepared by him and he was a witness. Two receipts were issued both in the names of Tan Ah Chuan and Chua Geok Eng; one was for $70,420, of which $70,000 was the purchase money and $420 stamp fees for the conveyance. The other receipt was for $380 being the costs for the conveyance. He could not remember if both the ladies actually paid these two sums but it was the practice of his office to issue receipts for costs and consideration money in favour of the transferees on a conveyance. Later the consideration money was paid to the vendor Tian Hup & Co. Ltd. He had a chief clerk called Tan Tiat Hee who is now dead. Tan Tiat Hee was in charge of this conveyance and he dealt directly with the plaintiff. In 1959 he prepared the mortgage exhibit P.2 and he witnessed the signature of the plaintiff. He told the other mortgagors as they were owners of the property to get a separate lawyer to advise them and they went to K. C. Khoo who witnessed the signatures of the other mortgagors. The mortgage Ex. P.3 was also prepared by him and he again witnessed the signature of the plaintiff while the signatures of the other mortgagors were witnessed by K. C. Khoo. As regards the letter Exhibit P.5 he recognised the signature of his clerk Tan Tiat Hee who signed as a witness. He did not know it was prepared by his clerk and signed by the two defendants. Not long after it was done it was brought to his notice. The plaintiff wanted him to keep the letter but he refused as it was not prepared by him.

H. F. Sheppard, advocate and solicitor in Messrs. Drew & Napier gave evidence to this effect. The plaintiff came to consult him about the recovery of the Tiong Bahru property from the two defendants. He prepared a conveyance (Ex. P.15) in which it was declared that the two defendants were the trustees for the plaintiff of the Tiong Bahru property and that the two defendants, at the request of the plaintiff, conveyed the Tiong Bahru property to the plaintiff. On or a few days before the 14th December, 1964, the second defendant came to his office with two witnesses. He explained the gist of the contents of Ex. P.15 to the second defendant in the presence of the witnesses. His secretary, Tan Boon San, acted as interpreter. The second defendant affixed her thumbprint willingly and then the two witnesses signed. He could not now remember the precise date when the second defendant affixed her thumbprint, he made no note of it. On the 14th December, 1964, he wrote a letter to the first defendant, enclosing a copy of Ex. P.15, and informing her that the second defendant had already signed the conveyance and requesting her to attend at his office to execute the conveyance. The first defendant never signed the conveyance.

Tan Boon San gave evidence to this effect. Sheppard summarised the contents of Exhibit P.15 and the translated it to the second defendant in Hokkien. The second defendant affixed her thumbprint to Exhibit P.15; the second defendant did not say anything. The two witnesses then signed.

Ong Kah Leong, a son-in-law of the plaintiff, gave evidence to this effect. He was one of the witnesses present when the second defendant affixed her thumbprint to Exhibit P.15. The other witness was the second defendant's son Chua Hong Tien. The contents of exhibit P.15 were explained to the second defendant by Tan Boon San. The second defendant was asked by Tan Boon San if she agreed and she answered in the affirmative. The second defendant then affixed her thumbprint to Exhibit P.15 and then Chua Hong Tien signed followed by him. A month later in April, 1961, he went to the office of O'Connor with the plaintiff, the second defendant, Chua Kah Wee and Chua Kah Bin. He acted as interpreter. The second defendant asked the plaintiff to instruct O'Connor to take legal proceedings against the first defendant for the recovery of the Tiong Bahru property.

So much for the evidence adduced by the plaintiff.

The first defendant's evidence was shortly this. In 1951 the plaintiff visited her and told her that he would give to her half share in the Tiong Bahru property. Later he gave her the half share and handed her the title deeds which she kept in a safe deposit box in a bank. Between 1951 and 1957 the plaintiff received the rents from the property and paid the property tax. In 1957 the plaintiff told her he was in need of money and asked her to be his guarantor for a loan. She agreed to help. She handed the title deeds to the plaintiff and they were deposited as security for a loan taken from the

United Chinese Bank Ltd. by the plaintiff. She never got back the title deeds. In 1959 the plaintiff again asked her to be his guarantor. She executed a legal mortgage in favour of the bank. The property has now been reconveyed to her. In 1962 the plaintiff told her that he was in need of money and requested her to allow him to sell the Tiong Bahru property to repay the bank. The plaintiff took her to P. Y. Tan's office where he asked P. Y. Tan's clerk Tan Tiat Hee to type a document. The clerk read the contents of the document to her which was to the effect that the Tiong Bahru property was bought with the plaintiff's money as a gift to her and that it was to be sold to raise money to repay the bank. She later told her husband what had taken place. Her husband was very angry and told her that she should not have agreed to give away all the money. The following day she told the plaintiff what her husband had said and he wrote the letter Exhibit D.4 to P. Y. Tan. She denied that she received the five cheques (Exhibits P.7 to P.11) from her sister Chua Kah Wee to pay the income tax on the Tiong Bahru property. It was her husband who all along paid the income tax on the Tiong Bahru property. She admitted that she willingly signed the two mortgages.

The second defendant's evidence was shortly this. She is the second wife of the plaintiff. On the 7th December, 1951, Tian Hup & Co. conveyed the Tiong Bahru property to her and the first defendant. The plaintiff told her that he had bought the property and that he had put it in her name and that of the first defendant, half share each, as a gift. The plaintiff also said that he would collect the rents and pay the income tax and that he would give her $150 per month. The title deeds were given to the first defendant. In 1959 at the request of the plaintiff and to assist him she willingly mortgaged the Tiong Bahru property. He told her that when he had the money he would redeem the property and give it back to her. She admitted that she signed the letter Ex. P.5 at the lawyer's office. She was brought there by the plaintiff and she was asked to affix her thumbprint to it. No one explained the contents of the letter to her and she did not know what it was. She thought it was a guarantee. If she knew the contents of Exhibit P.15 she would not have signed it. As regards the conveyance Exhibit P.15 she said that sometime in December, 1964, Ong Kah Leong took her to a lawyer's office. There the plaintiff asked her to affix her thumbprint to Exhibit P.15. No one explained the contents of Exhibit P.15 to her. The plaintiff told her that he was not on good terms with the first defendant's husband and that by affixing her thumbprint to the document he would be able to take action against the first defendant. She told the plaintiff that the Tiong Bahru property was the only property he had given her and she would have nothing to fall back on if she were to part with it and the plaintiff assured her that he would give her $150,000 for her half share in the Tiong Bahru property when he succeeded in his action against the first defendant. He said that he would give her the money as soon as he sold the property. When she affixed her thumbprint only Ong Kah Leong, the plaintiff and the lawyer were present. No one else signed the document. She did not remember going back to the same lawyer's office. She never saw O'Connor before.

Chua Hong Tien, the son of the second defendant, gave evidence to this effect. Plaintiff is his father. In 1951 he was a director of Tian Hup & Co. Ltd. and the plaintiff was the managing director. At that time the Tiong Bahru property was owned by the company. The plaintiff bought the Tiong Bahru property from the company for $70,000 but it was conveyed to the first and second defendants. The plaintiff gave Messrs. P. Y. Tan & Co. a cheque for $70,000 and Messrs. P. Y. Tan & Co. made out a cheque for the same amount in favour of the company. He and the plaintiff went to see the manager of the bank and there the plaintiff endorsed the cheque on behalf of Tian Hup & Co. Ltd. and the cheque was paid into the account of the plaintiff's other firm Chop Sim Kim Guan of which the plaintiff was and is still the sole proprietor. Sometimes in 1964 Ong Kah Leong took him to Messrs. Drew & Napier. On arrival there they saw an Indian clerk who took them to see Sheppard who asked if he was the second defendant's son. Ong Kah Leong answered in the affirmative and thereupon Sheppard produced the document Ex. P.15 and handed it to the Indian clerk. Sheppard spoke to the Indian clerk in English. The Indian clerk asked him in Malay if the thumbprint on Ex. P.15 was the thumbprint of his mother and told him to testify in court, if it was necessary, that he had witnessed his mother putting her thumbprint on Ex. P.15. He then signed Ex. P.15. After he had signed he left the office with Ong Kah Leong. At the time he left Ong Kah Leong had not signed Exhibit P.15.

So much for the evidence adduced by the defendants.

To put it shortly the undisputed facts are these:—

(1) The consideration for the conveyance was paid by the plaintiff, who also paid the stamp fees and the solicitor's fees.

(2) The rents of the property were paid over to the plaintiff.

(3) The plaintiff paid the property tax.

(4) The property was voluntarily mortgaged twice by the defendants at the request of the plaintiff and for the benefit of the plaintiff.

I have to find the answers to the following questions:—

(1) Who held the title deeds, the plaintiff or the first defendant?;

(2) Who paid the income tax on the property?;

(3) Did the defendants know the contents of Ex. P.57;

(4) Is Exhibit D.4 an authentic document;

(5) Were the contents of Ex. P.5 explained to the second defendant?

I should first of all state what I think of the credibility of the plaintiff and the defendants as witnesses. The impression I gained from seeing and hearing the plaintiff giving evidence in the witness box was that he was telling the truth. On the other hand the first and second defendants struck me as witnesses who were not telling the truth.

As regards the question who held the title deeds it appears to me to be more probable that they were held by the plaintiff. It is clear from the evidence of the bank manager, Kwa Choo Ping, that the title deeds of the Tiong Bahru property were with the bank between 1955 and 1960, whereas the first defendant said that she handed the title deeds to her father in 1957.

As regards the payment of income tax, the second defendant admitted that her income tax was paid by the plaintiff. The plaintiff said that he gave the first defendant the money to pay the income tax due on her share in the property and in this he was supported by the evidence of his daughter Chua Kah Wee. I find that the income tax on the property was provided for by the plaintiff.

As regards whether the defendants knew the contents of Exhibit P.5 the evidence of the first defendant shows that she knew its contents. The second defendant said in evidence that no one explained the contents of Exhibit P.5 to her and she did not know what it was. If the first defendant knew its contents, the second defendant must also know its contents, as the letter was explained to both of them by the clerk at P. Y. Tan's office. I find that both the defendants knew the contents of Exhibit P.5 and that they signed it voluntarily.

As to the authenticity of Exhibit D.4, I find, as I have said in my judgment in *Chua Kah Wee & Ors.* v. *Chua Geok Eng, supra,* that the plaintiff's story of signing eight pieces of blank paper and handing them to his son-in-law, the 1st defendant's husband, was probably true. It will be noticed that whereas Exhibit P.5 was witnessed by P. Y. Tan's clerk, Tan Tiat Hee, Exhibit D.4 was not witnessed by that clerk. If the first defendant's story about Exhibit D.4 is true then Exhibit D.4 would in all probability have also been prepared by Tan Tiat Hee. But, the paper of Exhibit D.4 is different from the paper of Exhibit P.5 and Exhibit D.4 was typed on a different typewriter. I find that Exhibit D.4 is not an authentic document.

After considering the evidence that has been adduced regarding the conveyance Exhibit P.15, I have no doubt that its contents were explained to the second defendant and her thumbprint was affixed voluntarily and in the presence of Ong Kah Leong and Chua Hong Tien. There is also no doubt that she and the plaintiff gave instructions to the solicitors to sue the first defendant for the recovery of the property.

The main question in this case is whether or not there is evidence establishing that in 1951 the plaintiff intended that his daughter the first defendant and his wife the second defendant should hold the Tiong Bahru property as trustees for him.

The settled law is that if *A* buys property in the name of *B*, who is no relative, *B* is held to be trustee of that property for *A* but if *B* is a child or a wife of *A* no such trust is presumed and the law presumes that the legal and beneficial ownership is in the child or the wife so that the onus is on those who seek to rebut the presumption and establish an absolute trust for the father.

The question then arises by what evidence can the presumption be rebutted?

The admissible evidence in rebuttal, (according to the authorities), is limited to acts, circumstances and declarations leading to or to forming part of the transaction or so immediately following and connected with it as in effect to be contemporaneous with or form part of it and such admissible evidence can be used either for or against the party who did the act or made the declaration. Subsequent acts and declarations are admissible as evidence only against the party who did the acts or made the declarations and not in his favour.

It is submitted by counsel for the first defendant that the acts of the defendants in mortgaging the property in 1959 and 1960 do not form part of the transactions of 1951 and therefore are not admissible evidence in rebuttal of the presumption of advancement.

It is true that the subsequent acts of the defendants cannot be admitted in evidence as part of the original transaction but, in my view, it can be admitted to rebut the presumption because they were in the nature of admissions

by the defendants against interest (*Shephard* v. *Cartwright* [2]).

In my view the declarations of the defendants in Ex. P.5 and the act of the second defendant in signing the conveyance Exhibit P.15 are also admissible evidence in rebuttal of the presumption for the same reason.

In considering whether the presumption has been rebutted I have taken into consideration the following facts:—

(1) The plaintiff enjoyed the rents.

(2) The plaintiff held the title deeds.

(3) The plaintiff paid the property tax and income tax.

(4) The acts of the defendants in mortgaging the property was at the direction of the plaintiff and for his benefit.

(5) The declarations of the defendants contained in Ex. P.5.

(6) The act of the second defendant in signing the conveyance Exhibit P.15 with full knowledge of the material facts.

By collecting the rents, paying the property tax and the income tax the plaintiff is in fact exercising all the functions of an owner.

The fact that the plaintiff held the title deeds is a very significant factor. In *Scawin* v. *Scawin,*[3] a father bought shares in the name of his son but retained the share certificate. It was observed by Knight Bruce V.C. (at p. 793):—

"The father may certainly, even in cases where the doctrine of advancement is held to take place, receive the title-deeds and the dividends; but although those circumstances may exist in such cases, yet they are circumstances in favour of the father, especially where the son is adult."

In the case of *Warren* v. *Gurney,*[4] a father bought a house in the name of his daughter but the title deeds were retained by the father. Morton L.J. said this (at p. 473):—

"The second contention put forward by counsel for the appellants was that, on the admissible evidence, the judge was not justified in coming to the conclusion that the defendants had rebutted the presumption of advancement. In my view, there was ample evidence to justify that conclusion of the judge. In the first place, there is the fact that the father retained the title deeds from the time of purchase to the time of his death. I think that is a very significant fact, because title deeds, as it was said in *Coke* on Littleton, are 'sinews of the land.' One would have expected the father to have handed them over, either to the plaintiff or her husband, if he had intended the gift."

It is clear that the defendants mortgaged the Tiong Bahru property at the request of the plaintiff and that they did it voluntarily and with full knowledge of the material facts. They made no claim on the Tiong Bahru property and their acts are strong evidence that they are trustees for the plaintiff.

In my view the plaintiff has discharged the burden which rests on him of rebutting the presumption of advancement and it has been established that the defendants hold the property in trust for the plaintiff.

It is submitted by counsel for the first defendant that the object of the conveyance to the defendants was to enable the plaintiff to defraud the income tax department and that the court should not assist the plaintiff to achieve this illegal object. There is no evidence that the object of the conveyance was to defraud the income tax department. The act of the plaintiff in purchasing the property in the names of the defendants is not illegal. Furthermore, (as I have said in my judgment in *Chua Koh Wee & Ors.* v. *Chua Geok Eng* [1]) I do not think that the first defendant should be allowed to suggest that the transaction was entered into for a fraudulent or illegal purpose when she had not pleaded it distinctly and she had not given any evidence about it. In this case the plaintiff has no reason to disclose any illegality and did not do so. Therein lies the distinction between *Palaniappa Chettiar* v. *Arunasalam Chettiar,*[5] on which the first defendant relies, and the present case.

In the result there will be judgment for the plaintiff with costs and the counterclaim of the defendants is dismissed with costs.

There will be an order in terms of prayers 1 and 2 of the plaintiff's claim.

Judgment for the plaintiff.

Solicitors: *Drew & Napier; Laycock & Ong; R. E. Redrup.*

MENON v. THE BROOKLANDS (SELANGOR) RUBBER CO. LTD.

[F.C. (Azmi C.J. (Malaya), Pike C.J. (Borneo) and McIntyre F.J.) August 27, 1968]

[Kuala Lumpur — Federal Court Civil Appeal No. X. 73 of 1967]

Master and Servant — Dismissal of servant — Disobedience — Whether dismissal wrongful.

This was an appeal against the judgment of the High Court ([1968] 1 M.L.J. 15) dismissing the appellant's action for damages for wrongful dismissal by the respondents. The facts in this case showed that the respondents were not satisfied with the way in which the appellant was performing his duties as a conductor on their rubber estate and he was given a verbal warning. His work continued to be unsatisfactory and a letter of warning was addressed to him stating that any further gross carelessness and negligence in the performance of his duties would result in his dismissal. This letter was delivered to the appellant by the assistant manager and he was asked to acknowledge receipt of it but he refused to do so. Subsequently the appel-